

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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DIAMOND JUNIOR,

Plaintiff,

v.

ERIE COUNTY MEDICAL CENTER  
CORPORATION,

Defendant.

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18-CV-1014  
DECISION AND ORDER

On September 14, 2018, the plaintiff commenced this Title VII action, alleging discrimination by her former employer. Docket Item 1. On October 18, 2018, this Court referred the case to United States Magistrate Judge Jeremiah J. McCarthy for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Docket Item 6.

On December 28, 2018, the defendant moved to dismiss, Docket Item 13; on January 24, 2019, the plaintiff responded, Docket Item 17; and on February 4, 2019, the defendant replied, Docket Item 19. On February 15, 2019, Judge McCarthy issued a Report and Recommendation ("R&R") finding that the defendant's motion should be granted but that the plaintiff should be granted leave to amend her complaint. Docket Item 23. The parties did not object to the R&R, and the time to do so now has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a de novo review of those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ.

P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge McCarthy's R&R as well as the submissions to him. Based on that review and the absence of any objections, the Court accepts and adopts Judge McCarthy's recommendation to grant the defendant's motion but to grant the plaintiff leave to amend her complaint.

For the reasons stated above and in the R&R, the defendant's motion to dismiss, Docket Item 13, is GRANTED but the plaintiff is GRANTED leave to amend her complaint. The plaintiff may file an amended complaint within **30 days of the date of this order**.<sup>1</sup> The case is referred back to Judge McCarthy for further proceedings consistent with the referral order of October 18, 2018, Docket Item 6.

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<sup>1</sup> The Court recognizes that the pro se plaintiff filed an amended complaint on March 1, 2019, Docket Item 24, after Judge McCarthy issued his R&R but before this Court adopted his recommendations in this order. If the plaintiff does not file another amended complaint before the deadline established in this order, that amended complaint will be deemed to be the one filed in exercise of the plaintiff's leave to amend without further order of this Court. Alternatively, the plaintiff may file another amended complaint by the deadline, or inform Judge McCarthy and the defendant that she does not intend to do so but intends to rely on the amended complaint she already filed. Judge McCarthy shall establish a time for the defendant to respond to any amended complaint under Fed. R. Civ. P. 15(a)(3).

SO ORDERED.

Dated: March 13, 2019  
Buffalo, New York

*s/ Lawrence J. Vilaro*  
LAWRENCE J. VILARDO  
UNITED STATES DISTRICT JUDGE